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6 **DISTRICT COURT FOR THE UNITED STATES**
7 **DISTRICT OF ARIZONA**

8 6 Keith Raniere,

Case No.: 4:22-cv-00561-RCC-PSOT

9 7 Plaintiff,
10 v.
11 Merrick Garland, *et. al.*

12 **PLAINTIFF'S MOTION FOR
EXTENSION OF TIME TO
RESPOND TO MOTION FOR
SUMMARY JUDGMENT
AND
MOTION FOR LIMITED
DISCOVERY REGARDING
EXHAUSTION OF
ADMINISTRATIVE REMEDIES**

13 12 Plaintiff, via counsel, requests an extension of 30 days to respond to Defendants'
14 Motion for Summary Judgment at Doc. 36. The reason for the extension is that Plaintiff
15 received information indicating that Defendant Warden Gutierrez was open to settlement
16 negotiations. The negotiations were unsuccessful. Additionally, Plaintiff is asking for
17 leave to conduct limited scope discovery regarding the facts asserted in Defendants'
18 Motion. If granted, the discovery will require additional time for gathering and
responding to the requests before a response can be filed.

19 Because Defendants have chosen to file a Motion for Summary Judgment instead
20 of a Motion to Dismiss, limited scope discovery is appropriate.

21 22 the district court may in its discretion limit discovery to
evidence concerning exhaustion, leaving until later—if it

becomes necessary—discovery directed to the merits of the suit. *See Pavey v. Conley*, 544 F.3d [739] at 742 [7th Cir. 2008].

¹ *Albino v. Baca*, 747 F.3d 1162, 1170 (9th Cir. 2014).

An inmate, that is, must exhaust available remedies, but need not exhaust unavailable ones... an administrative procedure is unavailable when (despite what regulations or guidance materials may promise) it operates as a simple dead end—with officers unable or consistently unwilling to provide any relief to aggrieved inmates. See [*Booth v. Churner*,] 532 U.S. [731], at 736, 738 [2001]

¹ *Ross v. Blake*, 578 U. S. 632, 642 (2016).

Here, Plaintiff requests the opportunity to do limited-scope discovery regarding the availability of remedies pursuant to *Ross*. Plaintiff intends to request policies regarding exhaustion generally, as well as records regarding the actions of Defendants as to Plaintiff's use of the grievance system specifically.

Undersigned reached out to opposing counsel for her position on these requests. Ms. Faulk objects to any discovery, and has not responded regarding the extension of time.

DATED this 25th day of May, 2023 by

/s/Stacy Scheff
STACY SCHEFF
Attorney for Plaintiff

Delivered via ECF
to all registered parties